

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 12,628

)

Appeal of )

)

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying his application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

FINDINGS OF FACT

The petitioner is a forty-one-year-old man with an eighth grade education. He has worked as a landscaping laborer and as a welder. He also has a history of alcoholism and drug abuse.

In July, 1993, the petitioner fell forty feet off a wall while he was intoxicated and sustained an injury to his urethra that required the surgical placement of a bladder drainage tube. A medical report from the petitioner's doctor immediately after the injury stated that: "Patient should be exempt from physical activity/work until said injury is healed. He may however participate in light activity/desk work".

The record shows that after his injury the petitioner applied for Vocational Rehabilitation, but that he has resisted that agency's suggestions that he avail himself of continuous and ongoing alcohol treatment and that he consider being retrained (i.e., obtaining a G.E.D.) to better qualify for sedentary jobs.

Although the petitioner's alcoholism remains an issue in terms of disability, a consultative psychological examination performed on December 13, 1993, concluded that while the petitioner was "totally out of touch with his feelings", he "should have no difficulty performing basic level work-type activities".

Based on the medical evidence it is found that the petitioner is capable of performing at least sedentary work. It is also found that his alcoholism, while problematic, does not prevent him from obtaining and keeping suitable employment.

ORDER

The Department's decision is affirmed.

### REASONS

Medicaid Manual Section M 211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

The regulations specify that an individual of the petitioner's age, education, and work experience, who is capable of performing at least "sedentary work", as it is defined in the regulations,<sup>(1)</sup> is considered "not disabled". 20 C.F. R. § 404, Subpart P. Appendix II, Rule 201.24.

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1. See 20 C.F.R. § 416.967(a).